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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

FERNANDO REY GOMEZ,

Defendant and Appellant.

F056966

(Super. Ct. No. 08CM7532)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kings County. Steven D. Barnes, Judge.

Scott Concklin, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez and Lloyd G. Carter, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Vartabedian, Acting P.J., Cornell, J., and Poochigian, J.

Appellant, Fernando Rey Gomez, pled no contest to possession of a sharp instrument while confined in a penal institution (Pen. Code, § 4502, subd. (a)),<sup>1</sup> and assaulting an inmate by means of force likely to cause great bodily harm (§ 4501) and admitted allegations that he had a prior conviction within the meaning of the three strikes law (§ 667, subds. (b)-(i)). After Gomez requested immediate sentencing and waived the preparation of a probation report, the court sentenced him to a six-year term, which it ran consecutive to the term Gomez was already serving. On appeal Gomez contends his abstract of judgment contains certain errors. We will find partial merit to this contention and direct the court to issue a corrected abstract of judgment. In all other respects, we will affirm.

### **FACTS**

The facts of the underlying offenses are omitted because they are irrelevant to the issues raised.

### **DISCUSSION**

In 2006, Gomez was convicted in San Bernardino County Superior Court case No. FSB14849 of voluntary manslaughter (§ 192, subd. (a)) and attempted voluntary manslaughter (§§ 664/192, subd. (a)) and sentenced to an aggregate term of 19 years 4 months in that case.

After sentencing Gomez in the instant case, the trial court issued an abstract of judgment that memorializes Gomez's 2006 convictions along with Gomez's convictions in the instant case. Gomez contends the court erred in memorializing his 2006 convictions in his current abstract because it may lead prison authorities to not award him 20 percent worktime credit when he finishes serving his sentence in case No. FSB14849. Respondent concedes that including both cases in the judgment may eventually prejudice

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<sup>1</sup> All further statutory references are to the Penal Code.

Gomez with respect to the conduct credit he earns. We will conclude that the abstract of judgment is confusing and direct the trial court to issue an amended abstract of judgment.

Gomez is limited to earning 15 percent conduct credit while he is serving his sentence for his 2006 convictions because the underlying offenses in that case were violent felonies. (§ 2933.1) Further, since Gomez's current convictions are not for violent felonies and the aggregate six-year term imposed did not merge with the sentence he was serving when he committed these offenses, he will be entitled to 20 percent conduct credit once he serves his sentence for his 2006 convictions. (*In re Tate* (2006) 135 Cal.App.4th 756, 765,)

Gomez's abstract of judgment in the instant case includes the sentences imposed in both cases and makes it appear as if Gomez was sentenced to an aggregate term of 25 years four months in both cases. The abstract also indicates, at item 5, that he is serving the instant sentence consecutive to the sentence imposed in his San Bernardino County case, thus making it seem that the aggregate 25-year four-month sentence in both cases is to be served consecutive to another case out of San Bernardino County. Therefore, we will direct the trial court to issue an amended abstract of judgment that memorializes the sentence imposed in the instant case and which refers to the sentence imposed on his 2006 convictions only in item 5 of Gomez's abstract of judgment as an incomplete sentence.

Gomez also contends his abstract of judgment erroneously indicates that he was sentenced on his 2006 conviction on December 1, 2006. This issue is moot because this information should not be included in the amended abstract of judgment we will direct the trial court to issue.<sup>2</sup> Moreover, although not specifically addressed by the parties, the

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<sup>2</sup> Respondent also asserts that the abstract of judgment erroneously indicates that Gomez is entitled to a total of 3973 days of time credit in the instant case. Respondent is wrong.

court did not memorialize in Gomez's abstract of judgment all the fines and fees it imposed as it is required to do. (*People v. High* (2004) 119 Cal.App.4th 1192, 1200.)

**DISPOSITION**

The trial court is directed to issue an amended abstract of judgment that references Gomez's San Bernardino County case No. FSB14849 only in item number 5 and which lists all the fines and fees imposed by the trial court. The trial court is further directed to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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The abstract of judgment at item 11 indicates that Gomez is entitled to these credits in case No. FSB14849 and no time credits in the instant case.